

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

★ AUG 17 2009 ★

BROOKLYN OFFICE

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In re: ZYPREXA  
PRODUCTS LIABILITY LITIGATION

MEMORANDUM ON  
COORDINATION OF  
SETTLEMENT AND  
RESOLUTION OF ATTORNEY  
GENERAL CLAIMS

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THIS DOCUMENT RELATES TO:  
ALL ACTIONS

04-MD-1596 (JBW)

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**JACK B. WEINSTEIN, Senior United States District Judge:**

To: State judges and counsel in *Zyprexa* cases brought by State Attorneys General against Eli Lilly and Company

The Honorable Timothy D. Fox  
*State of Arkansas ex rel. Dustin McDaniel, Attorney General v. Lilly, Case No.*  
*CV 2008 4722 (Circuit Court of Pulaski County, Arkansas, 1st Division)*

The Honorable Howland W. Abramson  
*Commonwealth of Pennsylvania v. Eli Lilly & Company, Inc., AstraZeneca*  
*Pharmaceuticals, L.P., and Janssen Pharmaceutical, Inc., Case No. 002836*  
*(Court of Common Pleas of Philadelphia County)*

The Honorable Roger L. Couch  
*State of South Carolina ex rel. Henry McMaster, in his capacity as Attorney*  
*General of the State of South Carolina v. Lilly, Case No. 2007-CP-42-1855*  
*(Court of Common Pleas, Seventh Judicial Circuit)*

The Honorable Robert P. Faust  
*State of Utah v. Lilly, Civil No. 070907357 (Third Judicial District Court of Salt*  
*Lake County)*

1. Before this court are a number of *Zyprexa* cases brought against Eli Lilly & Company  
by State Attorneys General. These cases were commenced in, or transferred to, the Eastern

District of New York by the federal Judicial Panel on Multidistrict Litigation. After extensive settlements, three such cases remain pending in this court: those brought by the Attorneys General of Idaho (Case No. 09-CV-432), Louisiana (Cases No. 05-CV-1455, 05-CV-1549), and Mississippi (Case No. 07-CV-645). As noted above, similar Attorney General cases still pending in state courts were brought by the Attorneys General of Arkansas, Pennsylvania, South Carolina, and Utah.

2. Efforts are being made to settle the cases brought by the Attorneys General now pending before this court and, this court is informed, in state courts. It would be useful to settle all Attorney General claims as part of a coordinated effort since the issues in each are much the same and settlement terms should be relatively uniform through the country.

3. Further delays will unnecessarily increase transactional costs. Settlements in Attorney General cases to date, as well as the extensive discovery materials assembled, suggest that pending cases can be, and should be, reasonably settled.

4. A global settlement of all cases, including those pending in state courts, is desirable. This is particularly true since uniform portions of settlements already approved contain restrictions on practices in the sale of pharmaceutical products that should be uniform throughout the nation. Hearings to ensure national uniformity of provisions affecting many institutions and persons not directly involved in these litigations may be necessary.

5. The parties in the *Zyprexa* cases pending in this court have been directed to engage in settlement discussions. See Attachment A (Order on Discovery Appeal and Special Settlement Master); Attachment B (Order to Special Settlement Master on Settlement of State Attorney

General Cases). Michael K. Rozen, Esq. was appointed Special Settlement Master. Fees for the Special Settlement Master, by direction of the court, have been arranged among the parties.

6. The cases before this court are now in the process of being settled.

7. In connection with settlement and all related processes, this court and the Special Settlement Master will fully cooperate with any state judge conducting a related Attorney General case who wishes to participate. The Special Settlement Master has been authorized to coordinate the work of this court with that of the state courts wishing his assistance. Any cooperation and coordination is wholly voluntary.

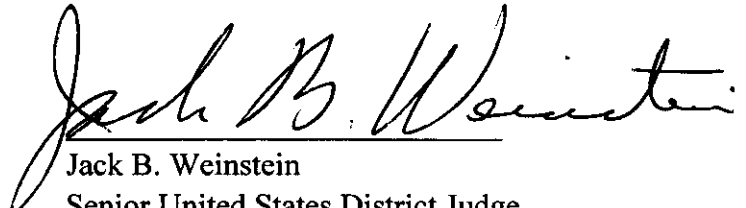
8. To assist all courts and parties involved in the *Zyprexa* litigation, discovery materials in the *Zyprexa* cases filed in or transferred to the Eastern District of New York have been made available to judges and counsel engaged in similar litigations both in the state and federal courts. *See In re Zyprexa Prods. Liab. Litig.*, 424 F. Supp. 2d 488, 491 (E.D.N.Y. 2006) (“[A]ll litigants, whether in federal or any state court, have access to the materials obtained in pretrial discovery.”).

9. This communication is being sent as a matter of comity and pursuant to national judicial policy promoting cooperation between federal and state courts dealing with closely related litigations. *See* Managing Class Action Litigation: A Pocket Guide for Judges 32-34 (2d ed. 2009) (discussing coordination of state and federal litigations); Manual for Complex Litigation §§ 21.42 and 20.32 (4th ed. 2007) (same); William W. Schwarzer, Nancy E. Weiss & Alan Hirsch, *Judicial Federalism in Action: Coordination of Litigation in State and Federal Court*, 78 Va. L. Rev. 1689 (1992). *See also* Attachment C (*In re Zyprexa Prods. Liab. Litig.*,

239 F.R.D. 316 (E.D.N.Y. 2007) ("Memorandum on Cooperation Between Federal and State Judges"))).

10. Special Settlement Master Rozen [The Feinberg Group, 780 Third Avenue, 26th Floor, New York, NY 10017; Phone: (212) 527-9600; Fax: (212) 527-9611] and this court are available to provide coordination and to give and take assistance with respect to still pending *Zyprexa* cases brought by the Attorneys General in state and federal courts.

11. I would very much appreciate your views. I am happy to visit with you by a telephone conference or in person, at your convenience.

  
Jack B. Weinstein  
Senior United States District Judge

Dated: August 17, 2009  
Brooklyn, New York